

IN THE BOARD OF REVEUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/1472/2006/Bharatpur.

1. Kuber Singh son of Fateh Singh (deceased) through LRs:-

1/1 Devendra Singh son of Kuber Singh

1/2 Virendra Singh son of Kuber Singh

1/3 Yogendra Singh son of Kuber Singh

1/4 Lokendra Singh son of Kuber Singh

All by caste Jat residents of village Bijwari Tehsil Weir Distt.

Bharatpur.

...Appellants.

Versus

1. State of Rajasthan through Distt. Collector, Bharatpur.

2. Tehsildar, Weir Distt. Bharatpur.

3. Gram Panchayat, Nevada through Sarpanch.

...Respondents.

D.B.

Shri Mukesh Kumar Sharma, Chairman

Shri Rajinder Kumar, Member

Present:-

Shri Ashok Agarwal, counsel for the appellants.

Shri V.P. Singh, Govt. Advocate for respondent No. 1 and 2.

J U D G M E N T

Date: 08.02.2019

1. This D.B. Appeal has been preferred against the judgment and decree dated 15.2.2006 of the learned Revenue Appellate Authority, Bharatpur passed in first appeal No. 310/01, whereby the learned first appellate court dismissed the said appeal filed by the plaintiff.

2. Facts of the case are that the original plaintiff Kuber Singh (since deceased) filed a suit in the trial court in respect of the land measuring 60 bigha comprised in khasra No. 658. As per the plaint averments, the plaintiff had been in physical and cultivatory possession of the disputed land since the time of his forefathers. As a matter of fact this was the ancestral and co-tenancy land of the plaintiff and its partition also took place before the samawat 2012. It is the khudkasht land of the plaintiff. Although in the revenue record this land has been recorded as 'Nadi' yet no nadi ever passed through this land. However, on the basis of the

revenue record, the revenue officers started interfering in the plaintiff's possession over the disputed land casting cloud over his right and title over it. Therefore, the plaintiff filed the suit seeking declaration of khatedari rights in this land and for permanent injunction. The suit was contested by the State Government by filing written statement. The learned trial court after putting the parties to trial, dismissed the suit of the plaintiff vide judgment and decree dated 31.7.2001. The plaintiff unsuccessfully challenged the said judgment and decree in the court of learned Revenue Appellate Authority, Bharatpur. Hence this appeal.

3. We have heard the learned counsels.

4. On behalf of the appellants it was argued that the courts below erred in dismissing the suit on the ground that the disputed land is entered in the revenue record as gair mumkin nadi and charagah and in pursuance to the provisions of section 16 of the Rajasthan Tenancy Act, 1955, khatedari rights could not be conferred on such lands. In making these observations, the courts below failed to take note of this fact that the disputed land has always been the khudkasht land of the plaintiff/appellant and has under his cultivation for last more than 100 years since the time of his forefathers. The learned trial court also failed to appreciate the fact that this was the ancestral and co-tenancy land of the plaintiff/appellant and its partition also took place before the commencement of the Act of 1955. The disputed land is surrounded by a 'med' on which different trees have also grown up. There is a tube well from which this land is irrigated. The land in question got flooded and it remained under water for some time but gradually the water dried out and again in the very next year cultivation was started thereupon. Therefore, the land settlement authority illegally entered this land as gair mumkin nadi, although nadi has never passed through this land. The land settlement authorities made the aforesaid entries under misconception of facts. The illegal entry cannot be made the basis of dismissal of the suit. The courts below misinterpreted and misconstrued the documents produced by the plaintiff. The mauka report dated 27.5.2001 clearly reveals that the land was under cultivation and crop sown by the plaintiff was standing thereupon. In that report it was also stated that no nadi

flows on the disputed land and Banganga Nadi flows a mile away from the disputed land. The legal position is well settled that while deciding the revenue matters regarding khatedari lands, the court should not be swayed away by the revenue entries and on the contrary, the actual use of the land should be taken into consideration. Despite this settled proposition of law, the courts below dismissed the suit only on the basis of revenue entries. It was the specific assertion of the plaintiff in his plaint that a wrong entry has been made in the revenue record that the disputed land is a charagah land. No order was obtained by the settlement authorities before recording the disputed land as charagah land. As per settled procedure the land for charagah purpose is set apart by the Distt. Collector and thereafter he entrusts the said land to the Gram Panchayat. In the instant case no such procedure was adopted and the Gram Pachayat is also not claiming the disputed land. Under section 29 of the Zamindari and Biswedari Abolition Act read with section 13 of the Rajasthan Tenancy Act 1955, the appellant has acquired khatedari rights over the disputed land by operation of law because the disputed land was the khudkasht land of the father of the appellant. In the samwat 2051 a notice was issued to the plaintiff/ appellant Kuber Singh that the disputed land is a gair mumkin nadi and charagah land but no action was ever taken against him, which is itself a proof of the fact that the possession of the appellant/ plaintiff is continuing for a long period of time. The plaintiff/ appellant did not claim the khatedari right on the basis of adverse possession and the courts below wrongly made observation that the plaintiff/ appellant has failed to prove his possession for a period of more than thirty years. The learned counsel also submitted that the learned first appellate court has not passed the judgment strictly in accordance with the provisions of Order 41 Rule 31 CPC. Therefore, a prayer was made to accept the appeal, set aside the impugned judgments and decrees of the courts below and decree the suit of the plaintiff.

5. The learned counsel for the State Government vehemently opposed the above submissions. He supported the findings of the courts below and made a prayer to dismiss the appeal.

6. We have given our thoughtful consideration to the rival submissions and perused the record carefully.

7. There are concurrent findings of the facts of the courts below that the possession of the plaintiff over the disputed land is not in the capacity of a tenant. On the contrary, he is occupying the disputed land as a trespasser. The said findings of facts are neither perverse nor illegal. It was not found proved by the courts below that the plaintiffs/appellants have acquired khatedari rights in pursuance to the provisions of section 13 of the Rajasthan Tenancy Act, 1955. There is a concurrent finding of facts of the courts below that the disputed land is the charagah land and the nadi land. The courts below on the strength of the provisions of section 16 of the Rajasthan Tenancy Act, 1955 also observed that khatedari cannot be conferred in respect of the lands which come under catchment area. These findings of the courts below are also based on correct appreciation of the material placed on the record. As the disputed lands are covered under Section 16 of the said Acts, therefore, the same are not available for allotment for agricultural purposes or for conferment of khatedari rights. In this regard, reliance is placed on the law laid down by the Hon'ble Rajasthan High Court in D.B. Civil Writ no. 1536/2003 'Abdul Rehman Vs State of Rajasthan. In that case, directions were issued by the Hon'ble Rajasthan High Court for restoring the catchment areas to their original shape. The plaintiffs herein have failed to rebut the documentary evidence placed on record in the form of record of rights. Therefore, merely on the basis of oral evidence produced by them, the entries of the said revenue record could not be said to have been rebutted. In view of this, the concurrent findings of facts of the courts below are binding on this Division Bench sitting in second appeal.

8. It is true that the learned first appellate court did not frame any points for determination of appeal strictly in accordance with the provision of Order 41 Rule 31 CPC but in our considered opinion this exercise was necessary only when a reversing judgment was to be passed by the first appellate court. In the instant case, the learned first appellate court has endorsed the findings of the trial court and it did not find any

illegality or perversity in the well considered judgment passed by the trial court. The mere fact that the points for determination were not separately framed by the first appellate court would not make the said judgment illegal. Therefore, there is no force in this appeal.

9. Resultantly, the appeal in hand is dismissed.

Pronounced.

(Rajinder Kumar)
Member

(Mukesh Kumar Sharma)
Chairman